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No.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1981

RICHARD JEROME PARMLEY,
Petitioner,

v.

THE STATE BAR OF CALIFORNIA AND THE COMMITTEE OF BAR EXAMINERS OF THE STATE BAR OF CALIFORNIA,
Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF CALIFORNIA

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QUESTION PRESENTED

Whether the Committee of Bar Examiners of the State Bar of California's refusal to grant petitioner either a hearing or an independent review regarding his scores on the October 1981 California First Year Law Students' Examination constitutes a violation of petitioner's rights under the due process or equal protection clauses of the fourteenth amendment to the U. S. Constitution.

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OPINION BELOW

Petitioner was informed by the Committee of Bar Examiners of the State of California that his request for an independent re-examination of his October 1981 First Year Law Students' Examination had been denied. The Supreme Court of California entered two orders, both unreported and without opinions, denying petitioner's Petition for Review and Petition for Rehearing. Copies of these orders appear in the Appendix hereto.

JURISDICTION

The order of the Supreme Court of California denying the Petition for Review was entered on March 25, 1982. A timely

Petition for Rehearing was denied on April 15, 1982, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is invoked under 28 U.S.C. §1257(3).

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

1. Fourteenth Amendment to the United States Constitution, Section 1:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall the State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

2. Rule VI, Section 61 of the Rules Regulating Admission to Practice Law in California.

> Every person who intends to seek admission as a "general applicant" (except those who become entitled to exemption as prescribed by this Rule) shall file application for and take the first-year law students' examination given next following the completion of one year of law study as prescribed by Section 91 hereof. An applicant who is required to take such examination shall not receive credit for any law study until he or she has passed such examination or become entitled to exemption therefrom; nor shall he or she receive credit for more than one year of law study as of the date of passing such examination or becoming entitled to exemption therefrom, unless upon petition and for good cause in a particular case the committee decides that additional credit should be given.

A petition requesting credit for such subsequent study or some part thereof may be filed after the petitioner has passed the first-year law students' examination; it shall state fully the reasons for not taking or not passing the prior first-year examination or examinations, shall be verified, and shall be accompanied by a filing fee and by such documentary evidence as the petitioner may wish the committee to consider.

3. West's Ann. Bus. & Prof. Code §6060 (See Appendix 3 for complete text).

STATEMENT OF THE CASE

Petitioner desires to take the California bar examination. California law requires that a student at an unaccredited law school must take and pass a first year law students' examination after the first year of law school as a necessary prerequisite to taking the California bar examination. A student at an unaccredited law school does not receive credit for his first year of law study or any subsequent law study until he has passed the first year law students' examination, unless the Committee of Bar Examiners decides credit can be given for good cause shown. West's Ann. Bus. & Prof. Code §6060(g).

Since 1978 petitioner has been a law student at the Laclede School of Law in St. Louis, Missouri, an unaccredited law school. The Laclede School of Law has applied for provisional accreditation with the Committee of Bar Examiners of the State Bar of California, but that accreditation has not yet been granted.

Petitioners applied to take the June 1981 California First Year Law Students' Examination (FYLSE), and received an admission card to take that examination. Upon his arrival in San Francisco to take the examination, petitioner was informed that

his admission card was not valid. Shortly thereafter, petitioner was informed that if he would sign a document stating that his examination may not be graded, he would be permitted to take the examination. Petitioner did sign the document and did take the examination; however, this series of events just moments before taking the examination caused him great emotional stress. Petitioner later received notification that he had failed the June 1981 California FYLSE.

At the time petitioner received this notification, he had completed approximately seventy-eight hours of law study at the Laclede School of Law. In order to preserve his rights to obtain credit for those hours of law study and because of the adverse conditions under which he had taken the June 1981 examination, petitioner filed with the Committee of Bar Examiners a petition for an anticipatory ruling that he had good cause for not having passed the June 1981 examination and that upon passing a future examination, credit for all law study beyond the first year should be granted. This petition was filed with the Committee of Bar Examiners pursuant to Rule VI, Section 61 of the Rules Regulating Admission to Practice Law in California

On September 30, 1981 petitioner was notified by the Committee of Bar Examiners that he had been granted an anticipatory ruling that he would not be denied credit for law study completed in excess of one year solely because of his failure of the June 1981 examination so long as he successfully passed the October 1981 First Year Law Students' Examination.

Petitioner then took the October 1981 examination and was later informed that he did not pass, having attained a score of 535 out of a possible 800. On that examination, 560 was the lowest possible passing grade, and the persons scoring between 540 and 560 were entitled to an independent reappraisal of their examinations.

Petitioner filed a petition with the Committee of Bar Examiners requesting an independent re-examination of his essay questions on the October 1981 examination. In that petition, petitioner raised for the first time the issue that any refusal to grant him an independent reappraisal of his examination would violate his due process and equal protection rights under the fourteenth amendment to the U.S. Constitution. Petitioner argued in that petition that all seven students from Laclede School of Law who took the October 1981 examination failed, and their scores were largely identical. Petitioner suspected some irregularities regarding the grading of the examinations of the Laclede students, and for that reason requested the independent reappraisal of his examination.

After some resistance on the part of the Committee of Bar Examiners, petitioner's request was placed on the agenda for the next meeting of the Committee of Bar Examiners. After the meeting petitioner was informed that his petition for an independent reappraisal of his examination had been denied. Although he so requested, petitioner was not given the opportunity to attend the meeting, present evidence, ask questions, cross-examine witnesses, or otherwise present his case to the Committee of Bar Examiners.

As a matter of policy, the Committee of Bar Examiners releases the bar examination test questions to the public, and a person who does not pass the bar examination can obtain copies of his examination answers, the test questions, and model answers.

As a matter of policy, the Committee of Bar Examiners provides that a person who does not pass the first year law students' examination has no access to model answers and can only obtain an independent review of his examination if his score falls between 540 and 560 out of 800.

Petitioner then filed a Petition for Review in the Supreme Court of California, again requesting an independent reappraisal of his October 1981 examination and alleging that his constitutional rights to due process and equal protection would be violated if this independent reappraisal was not granted because of the suspected irregularities in the grading and administration of the examination. The petition was filed, but before the State Bar of California could even file a response brief, the Supreme Court of California entered its order, without opinion, denying petitioner's Petition for Review.

Petitioner then filed a timely Petition for Rehearing but that also was denied by the Supreme Court of California without opinion.

REASONS FOR GRANTING THE WRIT

1. The Decision Below Is Not In Accord With Applicable Decisions Of This Court Regarding Due Process And Equal Protection Violations Prior To Admission To The Bar.

Over the years this Court has been presented with several cases involving the due process rights of applicants for bar admission. This Court has decided that a state cannot exclude a person from the practice of law or from any other occupation in a manner, or for reasons, that contravene the due process and equal protection clauses of the fourteenth amendment. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232 (1957).

This Court has held that before an applicant can be denied admission to the bar, he is entitled to certain necessary elements of procedural due process, including notice, a hearing on the grounds for his rejection, confrontation of witnesses, and the opportunity to present evidence on his behalf. *Willner* v. *Committee on Character and Fitness*, 373 U.S. 96 (1963). See also *Goldsmith* v. *United States Board of Tax Appeals*, 270 U.S. 117 (1926).

Petitioner contends that although he was a law student rather than a law graduate, and although the examination he took and failed was a first year law students' examination rather than the bar examination, because of the circumstances surrounding bar admission in California he is entitled to the same procedural due process protections that would be given to a bar applicant according to the *Willner* case.

Admission to the bar in most states involves passing the bar examination. If a person did not pass the bar examination, or was for some other reason denied admission to the bar, he would be entitled to the procedural due process protections as articulated by this Court in *Willner*. Since the petitioner was a student at an unaccredited law school, admission to the bar involves passing the first year law students' examination *and* pass-

ing the bar examination. The Supreme Court of California has recently upheld the validity of the first year law students' examination as a precondition to taking the bar examination in California. *Bib'le* v. *Committee of Bar Examiners,* 162 Cal. Rptr. 426, 606 P.2d 733 (1980). Since the first year law students' examination is a requirement that must be overcome before admission to the bar in California, petitioner contends that the procedural due process protections as defined in *Willner* are also applicable to a person who does not pass the first year law students' examination. By making the first year law students' examination necessary for students at unaccredited law schools before taking the California bar examination, California has created an entitlement that should be governed by the same procedural due process protections as spelled out by this Court in *Willner.*

If that is true, petitioner was entitled to notice, a hearing, and the opportunity to present his evidence on his petition that was originally presented to the Committee of Bar Examiners. Petitioner was given none of these. The petition for an independent reappraisal of petitioner's examination was reluctantly placed on the agenda of a meeting of the Committee of Bar Examiners and summarily denied with no input from the petitioner except the written petition.

The standard as set forth by the Supreme Court of California in evaluating petitions of unsuccessful bar applicants is that the examination will be reviewed only where there is a claim of fraud, imposition, coercion, arbitrariness, or that the determination was incorrect or unfair. *Salot* v. *State Bar,* 3 Cal.2d 615, 45 P.2d 203 (1935). *Staley* v. *State Bar of California,* 17 Cal.2d 119, 109 P.2d 667 (1941). In at least one instance that is reported, the Supreme Court of California has ordered an independent review of bar examination scores when there was evidence of irregularity and unfairness in the administration of the examination. *In Re Investigation of Conduct of Examination For Admission To Practice Law,* 1 Cal.2d 61, 33 P.2d 829 (1934).

Yet, when petitioner requested an independent reappraisal of his examination scores because of suspected irregularity regarding the grading of his examination and the examinations of other students from Laclede School of Law, he was not only refused the independent reappraisal but was also denied his procedural due process rights as specified in *Willner*. Even the Petition for Review in the Supreme Court of California was denied by the Court before the respondent had an opportunity to file its response brief. Because passing the first year law students' examination is on equal footing with passing the bar examination in California in order to obtain admission to the bar, petitioner contends that *Willner* applies to the first year law students' examination, and his petition for an independent reappraisal of his examination scores should have been properly considered by the Committee of Bar Examiners so as to give petitioner his procedural due process rights, and then should have been granted.

The petitioner also contends that his rights under the equal protection clause of the fourteenth amendment have been violated. As discussed above, the first year law students' examination and the bar examination are both preconditions to admission to the bar in California. Yet there are striking differences in the manner in which the two examinations are graded.

An unsuccessful bar applicant can appeal his scores pursuant to the procedural due process rights as articulated in *Willner;* an unsuccessful FYLSE applicant can only request an independent reappraisal of his score if it falls between 540 and 560 out of 800. An unsuccessful bar applicant who wishes to appeal can obtain copies of his answers as well as the test questions and model answers in order to prepare his appeal. An unsuccessful FYLSE applicant can obtain his own examination, but is not allowed access to any model answers.

This Court has held in *Schware* that a state cannot exclude a person from the practice of law for a reason that contravenes the equal protection clause of the fourteenth amendment. Fur-

ther, this court has stated that a classification "must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." *Royster Guano Co.* v. *Virginia,* 253 U.S. 412 (1920); *Stanton* v. *Stanton,* 421 U.S. 7 (1975).

California has a state law that requires students at unaccredited law schools to pass the first year law students' examination in addition to the bar examination before being admitted to the bar. Yet an unsuccessful applicant for the FYLSE is treated very differently and given significantly fewer rights than an unsuccessful bar applicant. An unsuccessful bar applicant can make use of the model answers to prepare his appeal. The model answers can be a benchmark against which to compare one's examination answers and thereby prove there was an error or other irregularity in grading. Yet this important aid is not available to an unsuccessful FYLSE applicant. Petitioner can think of no reason why California would decide to deny access to model answers to unsuccessful FYSLE applicants while making them available to unsuccessful bar applicants.

Petitioner contends that these dual standards bear no rational relationship to a legitimate state purpose because both examinations are necessary to obtain admission to the bar in California, and a person who is unsuccessful on one examination should be treated the same as a person who is unsuccessful on the other. Therefore, these dual standards violate equal protection as applied to the petitioner because they are inconsistent with previous decisions of this Court interpreting the equal protection clause of the fourteenth amendment.

2. The Decision Below Raises Significant Issues That Should Be Resolved By This Court.

First, this case involves petitioner's right to be admitted to a profession and to earn a livelihood.

Petitioner cannot be admitted to the practice of law in California without first passing the first year law students' examination. Therefore, that examination is as much an absolute requirement to the practice of law in California for petitioner and those similarly situated as is the bar examination itself.

Second, this Court in *Schware* and *Willner* has previously held that because a bar examination is a *sine qua non* for the practice of law, certain due process and equal protection safeguards are guaranteed applicants to the bar at that stage of the proceedings. While those constitutional safeguards are guaranteed to those persons taking the regular bar examination in California, no procedural due process rights adhere to those persons taking the first year law students' examination in California, even though the latter is every bit as much of an obstacle to the practice of law in California as the former.

Therefore, an entire class of persons are effectively denied procedural due process and equal protection rights guaranteed them by the U.S. Constitution in their application for admission to the legal profession at a stage that may prove absolutely fatal to their application for admission to the bar.

In order to protect the constitutional rights of this group of people who are attempting to be admitted to a profession and earn a livelihood, this Court should grant the Petition for Certiorari to resolve these important issues.

CONCLUSION

For the above stated reasons, a writ of certiorari should issue to review the judgment of the Supreme Court of the State of California.

Respectfully submitted,

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